

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TRUSTEES OF THE CONSTRUCTION  
INDUSTRY AND LABORERS HEALTH  
AND WELFARE TRUST; TRUSTEES OF  
THE CONSTRUCTION INDUSTRY AND  
LABORERS JOINT PENSION TRUST;  
TRUSTEES OF THE CONSTRUCTION  
INDUSTRY AND LABORERS VACATION  
TRUST; TRUSTEES OF THE SOUTHERN  
NEVADA LABORERS LOCAL 872  
TRAINING TRUST,

Plaintiffs,

v.

RAMCO MASONRY, INC.,

Defendant.

2:06-CV-00347-LRH-VPC

ORDER

Presently before the court is an Application for Default Judgment (# 11) filed by Plaintiffs, Trustees of the Construction Industry and Laborers Health and Welfare Trust, et al. The court clerk entered default against Defendant, Ramco Masonry, Inc. ("Ramco"), on September 27, 2006.

This action arises out of Ramco's alleged failure to "make its books and records available [to Plaintiffs] for a contract compliance review." (Compl. (# 1) ¶¶ 5-6.) Due to Ramco's failure to defend this action, the factual allegations of the complaint, with the exception of those relating to the amount of damages, are taken as true. *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977) (citing *Pope v. United States*, 323 U.S. 1 (1944)). However, an entry of default does

1 not automatically establish that the defaulting party is liable for damages. *See Danning v. Lavine*,  
2 572 F.2d 1386, 1388 (9th Cir. 1978). The factual allegations of the complaint must be sufficient to  
3 support a judgment against the defaulting party. *Id.*

4 Plaintiffs' complaint does not allege facts or pray for the relief sought in Plaintiffs' present  
5 application. The complaint alleges that Ramco is a signatory to labor and trust agreements, that it  
6 is obligated by those agreements to make its books and records available, and that it has failed to do  
7 so. (Compl. (# 1) ¶¶ 4-6.) Plaintiffs' complaint requests "an order compelling Defendant Ramco  
8 to make its books and records available for the purposes of conducting a contract compliance  
9 audit." (Compl. (# 1) at 3.) It also requests costs, prejudgment interest, and other relief that the  
10 court deems proper. *Id.*

11 However, Plaintiffs' application for default judgment alleges facts far beyond those alleged  
12 in the complaint, and requests relief wholly different than that prayed for in their complaint.  
13 Plaintiffs' application alleges that Ramco failed to pay all employee benefit contributions due for  
14 those months between January, 2005, through April, 2006. (Application for Default J. (# 11) at 3.)  
15 Plaintiffs also alleges that Ramco violated the Master Labor Agreement, the Trust Agreements, and  
16 Employee Retirement Income Security Act § 515, 29 U.S.C. § 1145, and seeks damages totaling  
17 \$109,447.2 pursuant to 29 U.S.C § 1132(g)(2). *Id.* at 3. Again, the complaint makes no such  
18 factual allegations and requests no such relief.

19 Taking the facts alleged in the complaint as true, Plaintiffs have not demonstrated that they  
20 are entitled to the relief sought in their application for default judgment.

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1 IT IS THEREFORE ORDERED that Plaintiffs' Application for Default Judgment is hereby  
2 DENIED.

3 IT IS SO ORDERED.

4 DATED this 2<sup>nd</sup> day of August, 2007.



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7 LARRY R. HICKS  
8 UNITED STATES DISTRICT JUDGE  
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